

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

THOMAS H FLUHARTY, Trustee of the
Chapter 11 Bankruptcy Estates of:
Dennis Ray Johnson, II (No. 3:16-BK-
30227); et al,

Plaintiffs,

v.

PEOPLES BANK, NA, et al,

Defendants.

Case No. 3:17-cv-04220

The Honorable Robert C. Chambers

**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY
JUDGMENT ON RECEIVERSHIP**

COMES NOW Thomas H. Fluharty, Esq., Trustee of the Bankruptcy Estate of Dennis R. Johnson and pursuant to FRCP Rule 56(a), moves for partial summary judgment on a portion of plaintiff's claim herein, to-wit, for a ruling that despite the proceedings in *Peoples Bank, NA v. Appalachian Mining and Reclamation, LLC, et al*, (Case No. 15-C-807, Circuit Court of Cabell County, West Virginia) ("the State Court action"), defendant Dennis Burkons was never a receiver under West Virginia law because neither he nor anyone else ever posted a receiver bond in the State Court action

This motion is made on the basis of the Complaint (ECF Doc. 1) and the document attached hereto as **Exhibit 1**, a Certification of the Clerk of Circuit Court of Cabell County in Case No. 15-C-807. For the above reasons and on the grounds stated in the Memorandum in Support filed herewith, plaintiff asks the Court for partial summary judgment ruling that defendant Burkons was never a receiver despite the proceedings in the State Court action.

Respectfully submitted,

THOMAS H. FLUHARTY, Trustee of the
Chapter 11 Bankruptcy Estates of:
Dennis Ray Johnson, II; DJWV2, LLC;
Southern Marine Services, LLC; Southern
Marine Terminal, LLC; Redbud Dock, LLC;
Green Coal, LLC; Appalachian Mining &
Reclamation, LLC; Producer's Land, LLC;
Producer's Coal, Inc.; & Joint Venture
Development, LLC

By: /s/ _____
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CERTIFICATE OF SERVICE

This is to certify that on the ____ day of January, 2018, the foregoing *Plaintiff's Motion for Partial Summary Judgment on Receivership* was filed electronically via the Court's EM/ECF filing system, which will send notification of such filing to all counsel of record.

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